

MEMORANDUM

January 18, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: SYNA N. DENNIS
Principal Deputy County Counsel
General Litigation Division

RE: Jesse Pace v. County of Los Angeles, et al.
Los Angeles Superior Court Case No. SC088051

DATE OF
INCIDENT: June 28, 2005

AUTHORITY
REQUESTED: \$600,000

COUNTY
DEPARTMENT: Fire Department

CLAIMS BOARD ACTION:

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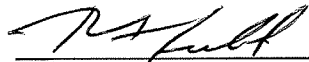
Approve

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Disapprove

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Recommend to Board of
Supervisors for Approval



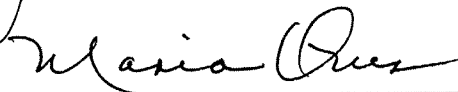
ROCKY A. ARMFIELD

, Chief Administrative Office



JOHN F. KRATTLI

, County Counsel



MARIA M. OMS

, Auditor-Controller

on April 2, 2007

SUMMARY

This is a recommendation to settle for \$600,000 the lawsuit of Jesse Pace. The litigation arises out of an accident which occurred on June 28, 2005, in Santa Monica. Mr. Pace was struck by a Ford F-150 lifeguard truck while sunbathing at the beach.

LEGAL PRINCIPLE

A public entity is liable for the negligent acts of its employees when the acts are done in the course and scope of employment.

SUMMARY OF FACTS

On June 28, 2005, Jesse Pace, age 19, was sunbathing alone on the beach, near Tower 25, during the mid-afternoon hours. Mr. Pace was in his junior year at Lee University in Tennessee, majoring in pre-medicine with a 3.7 grade point average. Mr. Pace was in California staying with relatives for the summer and working at the UCLA Medical Center assisting nurses to reposition patients in the intensive care unit.

A lifeguard was driving north on the sand, when she stopped behind Tower 25 to drop off a lost child. The lifeguard's vehicle was stopped facing north behind the tower for about 15 seconds, as a camp counselor approached the truck to escort the child from the vehicle. After the child and counselor walked away, the lifeguard began to turn left around the front of Tower 25 to return to her area.

The lifeguard testified that she did not see Mr. Pace lying on the sand before she began her left turn. While proceeding slowly, the right side of the lifeguard truck ran over Mr. Pace's left shoulder, across his chest and abdomen and toward his right hip. The lifeguard drove 20 to 30 feet before she felt a bump and stopped the vehicle.

Mr. Pace was treated at the scene, and transported to the UCLA Medical Center in West Los Angeles. A thorough examination of Mr. Pace disclosed that he sustained a ruptured spleen and blunt trauma injuries to his left shoulder, chest and abdomen.

DAMAGES

Mr. Pace's spleen was removed, and he remained in the hospital for seven days. Postoperatively, Mr. Pace developed hypoxia (a reduction of oxygen entering the blood) that initially required ventilation and, subsequently, intubation and mechanical ventilation on June 29, 2005. He was extubated but developed pulmonary edema that required reintubation for 36 hours.

Mr. Pace experienced a temporary feeling of suffocation, but he did not lose consciousness. He complained of difficulty breathing. Given the nature of the injury to his chest, his treating physician, based on the medical records, is expected to testify that Mr. Pace suffered a cardiac contusion. The doctor prescribed a regimen of exercises for Mr. Pace to mitigate the effects of his injuries and speed rehabilitation.

The injury to Mr. Pace's left shoulder caused restricted use of his left arm and shoulder for an extended period of time. Mr. Pace was partially disabled and was unable to fully participate in extracurricular activities, as he had prior to the incident, for several months after the incident.

Mr. Pace continues to complain of abdominal pain and has had several examinations and received treatment for intermittent abdominal pain and a dislocated rib. Additional treatment is expected to be necessary to reduce the scarring left as a result of the surgery.

Mr. Pace testified that his increased risk of infections due to the loss of his spleen has caused him anxiety about his planned future in the medical profession. He also experiences anxiety at the beach and no longer enjoys going to the beach.

The potential damages, should this matter proceed to trial, could be as follows:

Medical expenses	\$ 120,634
Future medical expenses	12,000
Loss of earnings	2,000
Future loss of earnings	500,000
Pain and suffering	<u>450,000</u>
Total	\$1,084,634

STATUS OF CASE

A court ordered mediation was held before Michael Moorehead, Esq., at Judicate West in Long Beach on November 13, 2006. No settlement was reached. Mr. Pace's initial demand of \$3.2 million was reduced to \$800,000. The County's last offer at the mediation was \$355,000.

Based on the liability exposure, Mr. Pace's confirmed damages for medical care, and the potential impact on his career plans resulting from his increased risk of infection due to the removal of his spleen, the mediator proposed that this case settle for \$600,000. Mr. Pace has accepted the mediator's proposal.

Expenses incurred by the County in defense of this matter to date are attorneys' fees of \$62,974 and \$3,054 in costs.

EVALUATION

The liability of the County arises from an apparent violation of the Fire Department policy relating to driving vehicles on the beach. That policy requires that before leaving a parked position, the driver must visually check in front of, back of, and beneath the vehicle before driving off. In light of the policy, it will be difficult to justify the lifeguard's conduct. Since the County has no reasonable defense on the issue of liability, the significant issue presented to the jury will be to determine the nature and extent of Mr. Pace's pain and suffering as a result of the sudden and traumatic nature of this incident, the blunt trauma he suffered and the surgical removal of his spleen. The jury also will be focused on whether Mr. Pace's increased risk of infections will limit his medical career choices and significantly decrease income-earning potential and his quality of life.

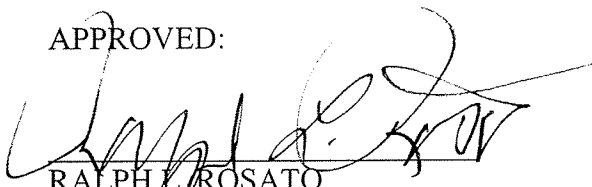
This case has had two roundtables, one on June 28, 2006, and the second on October 31, 2006, prior to the mediation. The consensus of the roundtable participants was to request Mr. Pace's settlement demand and reach a reasonable settlement, not to exceed \$600,000, without protracted litigation. The Fire Department participated in both roundtables.

RECOMMENDATION

There is a potential for a verdict in excess of the proposed settlement, because Mr. Pace's physicians and the County's infectious disease specialist agree that he is more susceptible to disease because of the loss of his spleen.

We believe that settlement of this litigation for \$600,000 is in the best interest of the County. The Fire Department concurs in our recommendation.

APPROVED:



RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

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